



SERIAL NUMBER	FILED DAY/20	FRALEY FIRST NAMED INVENTOR	R	38-24110525
				ATTORNEY DOCKET NO.

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FOX, D	EXAMINER
1804	ART UNIT
PAPER NUMBER	
12/17/89	

DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined.  Responsive to communication filed on 9/30/91.  This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                  |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/>   |

Part II SUMMARY OF ACTION

1.  Claims 1-17 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
2.  Claims \_\_\_\_\_ have been cancelled.
3.  Claims 1-3 and 16-18 are allowed.
4.  Claims 4-15 are rejected.
5.  Claims \_\_\_\_\_ are objected to.
6.  Claims \_\_\_\_\_ are subject to restriction or election requirement.
7.  This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8.  Formal drawings are required in response to this Office action.
9.  The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are  acceptable;  not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10.  The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been  approved by the examiner;  disapproved by the examiner (see explanation).
11.  The proposed drawing correction, filed \_\_\_\_\_, has been  approved;  disapproved (see explanation).
12.  Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has  been received  not been received  been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13.  Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14.  Other

EXAMINER'S ACTION

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1804.

Claims 4-15 (newly amended) remain rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants' amendment of the claims did not address the rejection, since the commas should have been inserted after the recitation of "promoter" which occurred before the phrase "and a structural gene sequence". Furthermore, the claims as now amended are awkward in their recitation of "cauliflower mosaic virus, said promoter, selected". Applicants are directed to claim 16 for proper comma placement.

Claims 1-17 are deemed free of the prior art, in view of the failure of Guilley et al. to teach the ability of the CaMV promoters to effect transcription of heterologous genes in plant cells, and further in view of the unpredictability inherent in CaMV promoter function, as argued on pages 7-8 of the amendment filed 30 September 1991. The Armstrong declaration filed 30 September 1991 was not relied upon by the Examiner, since it is not within the purview of the Examiner to evaluate the validity of issued U.S. patents.

Claims 1-3 and 16-18 are allowed.

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Art Unit 1804

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Applicant's amendment necessitated the new grounds of rejection. Accordingly, THIS ACTION IS MADE FINAL. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fox whose telephone number is (703) 308-0280.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

December 15, 1991

David T. Fox  
Patent Examiner  
Art Unit 184/1804

*David T. Fox*